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Second report of the Secretary-General submitted pursuant to Security Council resolution 1757 (2007)

I. Introduction

1. Under Security Council resolution 1757 (2007), I was mandated to take, in coordination, when appropriate, with the Government of Lebanon, the steps and measures necessary to establish the Special Tribunal in a timely manner, and to report to the Security Council within 90 days and thereafter periodically on the implementation of the resolution.

2. Since my first progress report, dated 4 September 2007 (S/2007/525), substantial progress has been made in a number of areas, including (a) the location of the seat of the Tribunal; (b) the appointment of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office; (c) the preparation of an estimate of the staffing and financial requirements; (d) the fulfilment of the Tribunal's funding requirements; (e) the establishment of the Management Committee; (f) the transition from the International Independent Investigation Commission to the Tribunal; (g) security issues; and (h) the development of a communication and outreach programme.

3. The purpose of this report is to present the progress achieved since the last report and to provide an outline of the next steps.

II. Location of the seat

A. Headquarters agreement

4. On the basis of the statement of the Government of the Netherlands, described in my last report, that it was favourably disposed towards hosting the Tribunal, the Secretariat and the authorities of the Netherlands engaged in negotiations with a view to concluding an agreement concerning the headquarters of the Tribunal. Pursuant to article 8 of the annex to resolution 1757 (2007), a headquarters agreement was to be reached on a tripartite basis between the United Nations, Lebanon and the State hosting the Tribunal. However, paragraph 1 (b) of resolution 1757 (2007) provides that, if the Secretary-General reports that the headquarters agreement has not been concluded as envisioned under article 8 of the annex to the resolution, the location of the seat of the Tribunal shall be determined in

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consultation with the Government of Lebanon and be subject to the conclusion of a headquarters agreement between the United Nations and the State that hosts the Tribunal.

5. On 9 November 2007, I wrote to the Prime Minister of Lebanon seeking his views on the issue of concluding a headquarters agreement as envisioned under article 8 of the annex. On 12 November 2007, he responded, agreeing with my assessment that, under the prevailing circumstances, it would be difficult to pursue a tripartite headquarters agreement to be signed and ratified in a timely manner, as called for in paragraph 3 of resolution 1757 (2007). While expressing approval of the location of the seat of the Tribunal in the Netherlands, the Prime Minister asked that I continue to take all the necessary steps and measures to continue facilitating the process and finalizing a bilateral headquarters agreement.

6. On 14 December 2007, I informed the President of the Security Council of the agreement between the United Nations and the Government of Lebanon that the United Nations should pursue a bilateral headquarters agreement with the Government of the Netherlands, adding that negotiations between the United Nations and the authorities of the Netherlands had been successfully concluded. The agreement provides, inter alia, that the host State has no obligation to let persons convicted by the Special Tribunal serve their sentence of imprisonment in a prison facility on its territory. It also stipulates that the Registrar shall take all necessary measures to arrange the immediate relocation to third States of witnesses who for security reasons cannot return to their home countries after testifying before the Tribunal. On 21 December 2007, representatives of the United Nations and the Netherlands signed the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the Special Tribunal for Lebanon. The Agreement was subsequently submitted by the Government to Parliament for approval.

B. Premises

7. In paragraph 6 of my last report, I indicated that the Legal Counsel of the United Nations, Nicolas Michel, had initiated discussions with the authorities of the Netherlands regarding the modalities of the establishment of the Tribunal and had visited possible sites to house the Tribunal. To determine which site was most suitable, a number of technical assessments of the sites were undertaken, all of which concluded that a building located in the urban area of The Hague was suitable for the purpose of housing the Tribunal. On that basis and after consulting with States that had made significant contributions or pledges to the funding of the Tribunal, on 6 December 2007 the Legal Counsel informed the authorities of the Netherlands that the building identified was the preferred site for the Tribunal, subject to an agreement on its cost. On 7 December 2007, the authorities of the Netherlands made an offer concerning the cost of the building, which was approved by the above-mentioned States on 12 December. Plans for the refurbishment and adaptation of the premises are currently being evaluated.

III. Appointment of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office

A. The judges

8. In paragraph 9 of my previous report, I indicated that, on 10 July 2007, the Government of Lebanon had forwarded to me, in a sealed envelope, a list of 12 candidates proposed for judicial appointments by the Lebanese Supreme Council of the Judiciary, as set forth in article 2, paragraph 5 (a), of the annex to resolution 1757 (2007). I also informed you that, with a view to my appointing Lebanese and international judges at the same time, on 1 August 2007 the Legal Counsel sent a letter to all Member States, on my behalf, inviting them to consider submitting candidates for appointment as judges of the Tribunal no later than 24 September 2007. The names of 37 international candidates were submitted.

9. In mid-October 2007, after indicating my intention to the Security Council in accordance with article 2, paragraph 5 (d), of the annex, I established a selection panel. The panel was composed of Judge Mohamed Amin El Mahdi (Egypt), who served as judge of the International Tribunal for the Former Yugoslavia from 2001 to 2005, Judge Erik Møse (Norway), currently serving as judge of the International Criminal Tribunal for Rwanda, where he was President of the Tribunal from 2003 to 2007, and the Legal Counsel.

10. In October and November 2007, the Secretariat held consultations with the Government of Lebanon in accordance with article 2, paragraph 5 (c), of the annex, which provides that the Government and the Secretary-General shall consult on the appointment of judges.

11. On 4 December 2007, having interviewed the short-listed candidates, the selection panel made its recommendations to me, which I subsequently accepted. Mindful of security considerations, I will proceed with the formal appointments of the judges and announce their names at an appropriate time in the future. The judges will assume their functions on a date to be determined by me, in consultation with the President of the Special Tribunal, as provided in article 17, paragraph (b), of the annex.

B. The Prosecutor and the Deputy Prosecutor

12. With a view to identifying candidates for consideration for the position of Prosecutor and taking into account the sensitivity of the matter, from June to September 2007, informal consultations were held with experts in the field. In October 2007, the selection panel (composed of the same members as that for the judges) interviewed candidates for this post. Early in November 2007, the Government of Lebanon was consulted on the appointment of the Prosecutor, pursuant to article 3, paragraph 1, of the annex to resolution 1757 (2007). On 8 November 2007, the selection panel recommended to me that Daniel Bellemare (Canada) be appointed as the Prosecutor. I subsequently accepted the recommendation.

13. On 14 November 2007, I appointed Mr. Bellemare as the Prosecutor of the Special Tribunal pursuant to my authority under article 3 of the annex. He will, however, commence his official duties as the Prosecutor at a later date in keeping with the provisions of the annex. On the same day, after the Security Council took note of my intention, I also appointed Mr. Bellemare to succeed Serge Brammertz as Commissioner of the Investigation Commission. I am of the view that, as called for in article 17, paragraph (a), of the annex, this approach will ensure a coordinated transition from the activities of the Investigation Commission to those of the Office of the Prosecutor of the Special Tribunal.

14. With respect to the Deputy Prosecutor, as I noted in paragraph 13 of my last report, the Government of Lebanon forwarded to me, in a sealed envelope, a list of candidates for the position. In December 2007, pursuant to consultations held between the Government of Lebanon, the Prosecutor-designate of the Special Tribunal and myself, a Deputy Prosecutor was identified. The appointment of the Deputy Prosecutor falls within the authority of the Government of Lebanon, in accordance with article 3, paragraph 3, of the annex.

C. The Registrar

15. On 13 November 2007, the Legal Counsel sent a letter to Member States on my behalf inviting them to submit nominations for appointment as Registrar of the Special Tribunal by no later than 14 December 2007. Pursuant to that letter, a total of 14 nominations were submitted by States.

16. In accordance with article 4, paragraph 2, of the annex to resolution 1757 (2007), the Registrar will be a staff member of the United Nations. On the basis of the recommendation of the selection panel that I established, on 10 March 2008, I appointed Mr. Robin Vincent as Registrar of the Special Tribunal for a period of three years to commence at a later date, to be determined in the light of the progress achieved in establishing the Tribunal.

D. The Head of the Defence Office

17. I am in the process of recruiting a Head of the Defence Office. Since my last report, a vacancy announcement for this position has been prepared and is being advertised. In accordance with article 13, paragraph 1, of the statute, I will appoint the Head of the Defence Office in consultation with the President of the Special Tribunal as soon as the latter has been identified.

IV. Staffing and financial requirements

18. My previous report provided preliminary estimates of the staffing and financial requirements of the Tribunal for three years. In arriving at these global estimates, attention was paid to the experience of other international tribunals, in particular the Special Court for Sierra Leone, which shares characteristics with the Tribunal. A number of issues which may have significant budgetary consequences, such as those relating to the premises of the Tribunal, the terms and conditions of

service for judges and staff, the number of accused persons, witnesses and trials, and the level of security required, have yet to be clarified.

19. The assumptions outlined in paragraph 20 of my previous report remain an important basis for the staffing and financial requirements. However, two additional considerations regarding the conditions of service for the judges and staff of the Tribunal have been raised:

(a) As stated in paragraph 20 (b) of my initial report, the terms and conditions of service for both judges and staff will be guided by those of the judges and staff of the Special Court for Sierra Leone, with appropriate modifications. Specific modifications to those conditions of service are currently under review with due consideration of host country social security requirements and of the Tribunal's location at a family duty station;

(b) Article 17 (a) of the annex to resolution 1757 (2007) provides for appropriate arrangements to be made to ensure that there is a coordinated transition from the activities of the Investigation Commission to the Office of the Prosecutor of the Special Tribunal. As noted by the Commission in its ninth report to the Security Council (S/2007/684, para. 98), transitional activities also rely on the institutional memory and experience gained by its staff. Whereas a principal aspect of the Tribunal's capacity to attract staff of the highest standards depends on competitive compensation practices, consideration is being given to aligning the conditions of service of staff with those prevailing in the United Nations common system in order to maintain a degree of continuity between the staff of the Commission and the Tribunal.

20. Except for the Registrar, who is a United Nations staff member, the terms and conditions of service of staff as described above apply uniformly to all staff recruited by the Tribunal.

21. It was stated in paragraph 21 of my previous report that, at that time, no assumptions could be made concerning the costs involved in providing for a courtroom, detention facility or office accommodation for staff. As the premises of the Tribunal have now been identified, estimated costs in those areas may be integrated into overall financial requirements.

22. The annual rental cost for the building will amount to approximately $5 million and will be paid for the first years by the host State, whose generosity in this regard I applaud. Operating costs for the building are estimated at $1 million per year. Refurbishment packages are currently under review. The packages provide for basic or advanced adaptations of the building in respect of security, holding cells, courtroom and offices.

V. Funding

23. Pursuant to article 5, paragraph 1, of the annex to resolution 1757 (2007), 49 per cent of the expenses of the Special Tribunal shall be borne by the Government of Lebanon, while 51 per cent shall be borne by voluntary contributions from States. According to paragraph 2 of the aforementioned article, the Secretary-General will commence the process of establishing the Tribunal when he has sufficient contributions in hand to finance the establishment of the Tribunal

and 12 months of its operations plus pledges equal to the anticipated expenses of the following 24 months of the Tribunal's operation.

24. As mentioned in paragraph 27 of my previous report, on 26 July 2007 the Secretariat created a trust fund to receive contributions for the establishment and activities of the Tribunal. On 8 October 2007, I sent a letter to all Member States inviting them to contribute to the trust fund. As at 27 February 2008, the total amount deposited in the trust fund is $29,430,872.15, with firm pledges totalling $16,408,637.34. I am confident that the contributions received, together with other expected contributions, will meet the budgetary requirements for the establishment and the first 12 months of operations of the Tribunal. On 5 December 2007, the States that had made significant contributions or pledges to the funding of the Tribunal unanimously agreed that funds should be managed directly by the Tribunal, as is the case with the Special Court for Sierra Leone, rather than through a United Nations trust fund. I will continue to seek the necessary funds from Member States and urge all to support the Tribunal and assist in this effort.

VI. Management Committee

25. As stated in paragraph 29 of my previous report, on 9 July 2007 the United Nations and the Government of Lebanon agreed to establish a Management Committee. They further agreed that the United Nations would be entrusted with the establishment of the Management Committee, including the drafting of its terms of reference, in consultation with the Government of Lebanon.

26. Accordingly, in November 2007, the Secretariat prepared, in consultation with the Government, a draft of the terms of reference of the Management Committee and discussed the draft informally with the States that had made significant contributions or pledges to the funding of the Tribunal.

27. As agreed with the Government of Lebanon on 13 February 2008, I formally established the Management Committee and invited the Legal Counsel to facilitate its first meeting.

28. Pursuant to article IV of its terms of reference, the Management Committee will, inter alia: (a) receive and consider progress reports of the Special Tribunal and provide policy direction and advice on all non-judicial aspects of its operations, including questions of efficiency; (b) review and approve the Tribunal's annual budget, take any other necessary financial decisions, and advise the Secretary-General on these matters; (c) ensure that all organs of the Tribunal are operating in as efficient, effective and accountable a manner as possible, and that optimum use is made of resources contributed by donor States, without prejudice to the principle of judicial independence; (d) assist the Secretary-General in ensuring that adequate funds are available for the operation of the Tribunal including the development of fund-raising strategies, in close consultation with the Registrar; (e) encourage all States to cooperate with the Tribunal; and (f) report on a regular basis to meetings of representatives of the Group of Interested States for the Special Tribunal.

29. Article VIII of the terms of reference also provides that the Management Committee will organize regular meetings of representatives of the Group of Interested States and may invite, when it deems appropriate, other interested parties to submit their views regarding the work of the Tribunal.

VII. Transition from the Investigation Commission to the Special Tribunal

30. Article 17 (a) of the annex to resolution 1757 (2007) calls for appropriate arrangements to be made to ensure a coordinated transition from the activities of the Investigation Commission to the Office of the Prosecutor of the Special Tribunal. Since my last report, a series of measures have been taken and ongoing consultations held between the Secretariat and the Commission aimed at achieving this objective.

31. The possibility of ensuring a transition of personnel from the Investigation Commission to the Office of the Prosecutor has been considered with a view to preserving to the greatest extent possible institutional memory and experience gained by staff.

VIII. Security

32. The provision of appropriate security measures for personnel and property remains one of the key pillars of the successful establishment of the Tribunal. To that end, the Secretariat is working in close cooperation with the relevant authorities of the Netherlands and Lebanon.

33. In addition, the Secretariat, the Investigation Commission and experts from the International Tribunal for the Former Yugoslavia and the Special Court for Sierra Leone have been working together on developing a strategy for the protection of witnesses. Consultations were recently held to discuss the practical implementation of such measures.

IX. Communication and outreach

34. The Secretariat has conducted extensive consultations with experts from other international tribunals and a comprehensive communication and outreach strategy was developed. A key objective of the strategy is to ensure that the Tribunal is correctly perceived as a truly independent and impartial judicial body, which functions in accordance with the highest standards of justice. Public documents that provide comprehensive information on the Tribunal are being finalized for the purposes of wide dissemination within Lebanon, the region and the public at large. In addition, work on the establishment of an initial communications capacity for the Tribunal is under way, including the creation of a website.

X. Next steps

35. In paragraph 34 of my previous report, I had identified three phases in the establishment of the Tribunal: a preparatory phase; a start-up phase; and the commencement of functioning.

A. Preparatory phase

36. As described above, all the actions relating to the preparatory phase have been undertaken, if not completed:

(a) The Headquarters Agreement has been signed;

(b) The premises for the Special Tribunal have been identified;

(c) The judges, the Prosecutor and the Registrar have been selected;

(d) The Management Committee has been established;

(e) The recruitment process for the Head of the Defence Office has begun;

(f) A draft budget, including a staffing table, has been developed and will be submitted soon to the Management Committee for consideration;

(g) Communication and outreach policies have been prepared.

B. Start-up and commencement of the Special Tribunal's functioning

37. The start-up phase has now commenced. Work on the preparation of the premises and on the organization of a coordinated transition between the Independent Commission and the Tribunal is being conducted. Once the Registrar starts operating in that capacity, a core unit of Registry personnel will be established in The Hague to assist the Registrar in his functions.

38. The Tribunal will commence functioning in successive phases. I anticipate that early informal consultations among the judges will facilitate the drafting of the rules of procedure and evidence and other necessary documents (such as directives on the assignment of defence counsel, on the detention of persons awaiting trial or appeal, and the code of professional conduct for defence counsel). In addition to the Registrar, the Prosecutor, followed by the pre-trial judge, will start their duties earlier than the other senior officials in order to perform their tasks in an effective and coordinated manner. The President of the Tribunal will also take up his or her duties on a full-time basis at an earlier date to ensure the efficient management and functioning of the Tribunal. The judges of the Trial and Appeals Chambers, as stated in article 17, paragraph (b), of the annex to resolution 1757 (2007), will take office on a date to be determined by me, in consultation with the President of the Tribunal. Until they are called to work on a full-time basis, they will serve on an ad hoc basis to perform their duties.

XI. Final observations

39. I wish to assure you that the Secretariat is dedicated to continuing to make progress in the establishment of the Special Tribunal for Lebanon in a timely manner as mandated by the Security Council. In this regard, we rely on the generosity and support of Member States. I trust that our common efforts will assist the Government and people of Lebanon towards this important common goal of restoring justice and the rule of law in Lebanon.